

<p style="text-align: center;"><b>SELECTED CITES OF LAWS / REGULATIONS / OMB CIRCULARS RELATED TO FEE-FOR-SERVICE</b></p>
---

This document details:

- I. GENERAL AUTHORITY TO CHARGE FEES FOR FEDERAL AGENCIES**
- II. RELEVANT SECTIONS OF WAGNER-PEYSER ACT / REGULATIONS**
- III. RELEVANT SECTIONS OF JOB TRAINING PARTNERSHIP ACT / REGULATIONS**
- IV. RELEVANT SECTIONS OF OMB CIRCULAR A-102**
- V. RELEVANT SECTIONS OF OMB CIRCULAR A-25**

**I. AUTHORITY:**

General authority for Federal agencies such as USDOL to establish and impose user fees is found in the United States Code, Title 31, Section 9701 and Office of Management and Budget Circular A-25.

1. Title 31 U.S.C. Section 9701, "Fees and charges for Government services and things of value" provides that "each service or thing of value provided by an agency (except a mixed ownership Government corporation) to a person...is to be self-sustaining to the extent possible.: Each agency is authorized to prescribe regulations establishing a charge for service or thing of value provided by the agency, subject to uniform Government policies. Section 9701 provides that such charges shall be fair and based on: the costs to the Government; the value of the service or thing to the recipient; public policy or interest served: and other relevant facts.
2. Office of Management & Budget Circular No. A-25, "User Charges" states the general policy that "A reasonable charge should be made to each identifiable recipient for a measurable unit or amount of government service or property from which he derives a special benefit." This includes costs of enforcement, research, establishing standards, and regulation, if the head of the e agency determines such costs are properly chargeable to the activity. The Circular specifies that a charge should be assessed to recover the full cost (all applicable direct as well as indirect costs) of all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large. It further specifies that the responsibility for initiation, development, and adoption of fee schedules consistent with the provisions under this Circular, rests with the agency.
3. The Wagner Peyser Act section 13(b)(1) states "Nothing in this Act shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee."
4. Administrative Conference of the United States Recommendation No. 87-4, "User Fees", June 12, 1987. The Administrative Conference of the United States conducted a study of the user fee concept in cooperation with the Office of Management and Budget and several other Federal agencies. The Conference recommendations included the following basic principles:
  - a) Where third parties or the general public benefit significantly from a governmental service, user fees need not be set to recover fully the cost of providing that service. Agencies should consider the practicability of

allocating costs between fee payers and others when determining the proportion of service costs to be recovered by user fees (as opposed to alternative financing mechanism).

- b) The fee level may be set without regard to the distribution of benefits among the customers, employees and owners of the fee payers. However, selection of the point of collection should take into account the costs of administration.
  - c) The Conference took no position on whether fee receipts should be deposited in the Treasury general fund or earmarked to a specific fund.
5. National Performance Review recommendation to test Fee for Service approaches to "reduce the burden of maintaining a system to charge administrative costs to Federal agencies..." and other purposes.

## **II. WAGNER-PEYSER ACT /REGULATIONS:**

### **The Act:**

The Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49, established the Job Service system. The Act authorized a national system of public employment offices to assist men, women and youth in obtaining employment. The Job Service performs essentially a labor exchange function. That is, the system provides no-fee employment services to applicants seeking employment and to employers seeking applicants. Among the services provided applicants are job information, referral to job openings listed with the Job Service, employment testing, job development and referral to training. Among the services provided to employers are referral of qualified applicants to job opening listed with the job Service system; labor market information; and assistance in meeting affirmative action obligations under legislation, court order, consent decree, government contract, or other fair employment practice authority rulings.

SEC. 7(a) states, "Ninety percent (90%) of the sums allotted to each State pursuant to section 6 *may be used ---*

- (1) For job search and placement services to job seekers including counseling, testing, occupational and labor market information, assessment, and referral to employers;
- (2) For appropriate recruitment services and special technical services for employers; and
- (3) For any of the following activities:
  - (a) evaluation of programs;
  - (b) developing linkages between services funded under this Act and related Federal or State legislation, including the provision of labor exchange services at education sites;
  - (c) providing services for workers who have received notice of permanent layoff or impending layoff, or workers in occupations which are experiencing limited demand due to technological change, impact of imports, or plant closures;
  - (d) developing and providing labor market and occupational information;
  - (e) developing a management information system and compiling and analyzing reports therefrom; and
  - (f) administering the work test for the State unemployment compensation system and providing job finding and placement services for unemployment insurance claimants."

Section 7(b) states, "Ten percent of the sums allotted to each State pursuant to section 6 shall be reserved for use in accordance with this subsection by the Governor of each such State to provide-

- (1) Performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary, taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such offices or programs), wages on entered employment, retention, and other appropriate factors;
- (2) Services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate private industry council and chief elected official or officials or other public agencies or private nonprofit organizations; and
- (3) the extra costs of exemplary models for delivering services of the types described in subsection (a)."

SEC. 13 (b)(1) states, "Nothing in this Act shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee."

#### The Wagner-Peyser Regulations

Regulation section 652.5 - Services, authorized states, "The sums allotted to each State pursuant to Section 6 of the Act shall be expended consistent with an approved plan pursuant to Sec. 652.7 of these regulations. At a minimum, each State shall provide the basic labor exchange elements defined at Sec. 652.3 of these regulations."

Regulation section 652.3 - Basic Labor Exchange System, states, "At a minimum, each State shall administer a labor exchange system which has the capacity:

- (a) To assist jobseekers in finding employment;
- (b) To assist employers in filling jobs;
- (c) To facilitate the match between jobseekers and employers;
- (d) To participate in a system for clearing labor between the States, including the use of standardized classification systems issued by the Secretary pursuant to JTPA Section 462(c)(3); [which states that "standards of statistical reliability and national standardized definitions of employment, unemployment, and industrial and occupational definitions are used"]; and
- (e) To meet the work test requirements of the State unemployment compensation system.

Regulation section 653.101 - Provision of services to migrant and seasonal farmworkers, (MSFWs), states, "(a) Each State agency and each local office shall offer to migrant and seasonal farmworkers (MSFWs) the full range of employment services, benefits and protection, including the full range of counseling, testing, and job and training referral services as are provided to non-MSFWs."

### **III. JOB TRAINING PARTNERSHIP ACT / REGULATIONS:**

#### The Act:

Sec. 141 (j) of JTPA states, "No person or organization may charge an individual a fee for the placement or referral of such individual in or to a training program under this Act."

Regarding FUNDS USAGE, JTPA section 141 (m) states that, "Pursuant to regulations of the Secretary, income generated under any program may be retained by the recipient to continue to carry out the program, notwithstanding the expiration of financial assistance for that program. "

The JTPA Regulations:

JTPA regulation section 627.450 - Program Income states

"(a) Definition of program income.

(1) Program income means income received by the recipient or subrecipient that is directly generated by a grant or subgrant supported activity, or earned only as a result of the grant or subgrant. **Program income includes:**

- (i) Income from fees for services performed and from conferences;
- (ii) Income from the use or rental of real or personal property acquired with grant or subgrant funds;
- (iii) Income from the sale of commodities or items fabricated under a grant or subgrant;
- (iv) Revenues earned by a governmental or non-profit service provider under either a fixed price or reimbursable award that are in excess of the actual costs incurred in providing the services; and
- (v) Interest income earned on advances of JTPA funds.

(2) **Program Income does not include:**

- (i) Rebates, credits, discounts, refunds, etc., or interest earned on any of them, which shall be credited in accordance with Sec. 627.435(d), Cost principles and allowable costs;
- (ii) Taxes, special assessments, levies, fines, and other such governmental revenues raised by recipient or subrecipient; or
- (iii) Income from royalties and license fees for copyrighted material patents, patent applications, trademarks, and inventions developed by a recipient or subrecipient.

(3) **Property.** Proceeds from the sale of property shall be handled in accordance with the requirements of Sec. 627.465 of this part, Property management standards.

(b) Cost of generating program income. Costs incidental to the generation of program income may be deducted, if not already charged to the grant, from gross income to determine program income.

(c) Use of Program Income (l)

- (i) A recipient or subrecipient may retain any program income earned by the recipient or subrecipient only if such income is added to the funds committed to the particular JTPA grant or subgrant and title under which it was earned and such income is used for that title's purposes and under the terms and conditions applicable to the use of the grant funds.
- (ii) The State may use interest it earns on JTPA funds, deposited by the United States to the State's account, to satisfy the requirements at 31 U.S.C. 6503(c) that the State pay interest on such deposits.
- (iii) The classification of costs in Sec.'s 627.440 and 631.13 shall apply to the use of program income.
- (iv) The administration cost limitation in Sec.'s 627.445 and 631.14 shall apply to the use of program income, except that program income used in accordance with paragraph (c)(1)(ii) of this section shall be exempt from the administrative cost limitations.

- (2) Program Income generated under title II may also be used to satisfy the matching requirements of section 123(b) of the Act.
- (3) Program income shall be used prior to the submission of the final report for the funding period of the program year of funds to which the earnings are attributable.
- (4) If the subrecipient that earned program income cannot use such income for JTPA purposes, the recipient may permit another entity to use the program income for JTPA purposes.
- (5) Program income not used in accordance with the requirements of this section shall be remitted to the Department of Labor.
- (d) Program and other income after the funding period. Rental income and user fees on real and personal property acquired with JTPA funds shall continue to be JTPA program income in subsequent funding periods. There are not Federal requirements governing the disposition of all other income that is earned after the end of the funding period.

JTPA section 627.440(e)(4): Profits, fees, and other revenues earned by a subrecipient that are in excess of actual costs incurred, to the extent allowable and consistent with the guidelines on allowable costs prescribed by the Governor in accordance with Sec. 627.435(i). Cost principles and allowable costs, may be allocated to all three cost categories based on the proportions share of actual costs incurred attributable to each category.

#### **IV. OMB CIRCULAR A-102 (29 C.F.R. 97)**

"Uniform Administrative Requirements for Grants to State & Local Gov'ts"

In this OMB, section 7.25 Program Income:

- (a) General. Grantees **are encouraged to earn income to defray program costs. Program income includes income from fees for services performed**, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.
- (b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.
- (c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.
- (d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

- (e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income (See 97.34)
- (f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of 97.31 and 97.32.
- (g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.
  - (1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.
  - (2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.
  - (3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirements of the grant agreement. The amount of the Federal grant award remains the same.
- (h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e. until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

## **V. OMB CIRCULAR A-25**

### **"User Charges"**

Coverage: "Except for exclusions specifically made hereafter, the provisions of this Circular cover all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that services."